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GTE Service Corporation
1850 M Street, N.W., Suite 1200
Washington, DC 20036
202 463-5200

January 20, 1999

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Ms. Magalie R. Salas
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, DC 20554

Ex Parte: **Deployment of Wireline Services Offering Advanced Telecommunications
Capability - CC Docket No. 98-147 ✓**

Dear Ms. Salas,

On January 19, 1999, I hand-delivered the attached *ex parte* letter to Chairman William E. Kennard, with copies to Commissioners Harold Furchtgott-Roth, Susan Ness, Michael Powell, Gloria Tristani and Common Carrier Bureau Chief, Lawrence Strickling. The letter outlines GTE's response to the *ex parte* letter from Larry Irving, National Telecommunications and Information Administration dated January 11, in the proceeding indicated above.

Pursuant to Section 1.1206(a)(1) of the Commission's rules, and original and one copy of this letter are being submitted to the Office of the Secretary. Please associate this notification with the record of CC Docket 98-147.

If you have any questions regarding this filing, please call me at (202) 463-5293.

Sincerely,

W. Scott Randolph
Director - Regulatory Matters

Attachment

cc: Chairman William E. Kennard
 Commissioner Susan Ness
 Commissioner Harold Furchtgott-Roth
 Commissioner Michael Powell
 Commissioner Gloria Tristani
 Lawrence Strickling, Chief, Common Carrier Bureau

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Washington, D.C. 20036-5801
202 463-5200

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**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY**

January 19, 1999

The Honorable William E. Kennard
Chairman
Federal Communications Commission
The Portals
445 12th Street, S.W.
Washington, D.C. 20554

**Ex Parte: Deployment of Wireline Services Offering Advanced
Telecommunications Capability, CC Docket No. 98-147**

Dear Chairman Kennard:

By this letter, GTE responds to the January 11, 1999 ex parte letter to you from Larry Irving, the [title] of the National Telecommunications and Information Administration ("NTIA") in the above-captioned docket (the "NTIA Letter"). GTE agrees with NTIA that "ILECs must have a fair opportunity to market DSL services in competition with other, largely unregulated companies that are now emerging to satisfy the burgeoning consumer demand for higher-speed data services." (NTIA Letter at 1.) Acting upon this recognition is critical. As GTE detailed in responding to the NPRM and the companion NOI, there are real and viable broadband options available to subscribers in addition to the telco local loop – most notably, but not limited to, cable modem service. Cable modem service already is offered to millions of customers, is growing at a phenomenal rate, and is entirely free of access or rate regulation. Consequently, the Commission should exercise the lightest possible regulatory hand and allow the marketplace to function without undue intervention.

The importance of regulatory restraint, and of affording ILECs a fair opportunity to compete, is underscored by numerous developments since the close of the comment cycle in this docket. Most notably:

- AT&T has announced that it will spend two billion dollars more than previously planned in 1999 on upgrading TCI's cable systems to offer packages of TV, local telephone, and Internet services – even as it refuses to open TCI's broadband cable networks to competing information service providers and opposes any relief for local telephone companies in this

docket. See "AT&T Speeds Local Service Effort," AP Headlines, Jan. 8, 1999.

- AT&T is expected imminently to announce a sweeping agreement to offer telephony over Time Warner's cable systems and is vigorously pursuing similar arrangements with other multiple system owners ("MSOs"). See "Time Warner, AT&T Deal Close," Electronic Media, Dec. 21, 1998.
- Numerous other MSOs are rapidly upgrading their systems to offer high-speed Internet access and competitive voice telephony, with considerable success in the market. See, e.g., "MediaOne(R) Launches Digital Telephony Services in Arlington," PR Newswire, Jan. 14, 1999.
- WinStar has introduced broadband wireless local loop services in 30 major markets around the country. "WinStar Commercially Deploys Point-to-Multipoint Technology", <http://www.winstar.com/indexNews.htm>, December 17, 1998.
- NextLink, led by Craig McCaw, has announced that it will acquire wireless local loop provider WNP Communications for \$ 695 million. See S. Rosenbush, "Wireless network companies link into market," USA Today, Jan. 15, 1999, at 1B.

It bears emphasis that none of these major multinational companies is forced to provide advanced services or any other products or lines of business through a separate affiliate. Each can integrate its operations to achieve maximum efficiency, each can joint-market its full suite of offerings without limitations, and each can deploy corporate resources as it sees fit without regulatory oversight or constraint. Only ILECs are subject to these disabilities.

Against this background, GTE concurs with many of NTIA's recommendations (discussed in section 1 below) for making the separate affiliate option a realistic alternative. At the same time, though (as discussed in section 2), NTIA makes several proposals that would require fundamental and unwarranted changes in GTE business operations (including its existing provision of advanced services) which are conducted in accordance with the FCC's current rules. Many of these proposals would undermine, rather than promote, the critical goals underlying Section 706 and require the Commission to take actions beyond its statutory charter. In their stead, the Commission should adopt GTE's National Advanced Services Plan ("NASP"), which would place affiliates owned by the corporate parent of an ILEC on the same ground as

any other advanced service provider, while avoiding unnecessary regulatory intrusion and preserving investment incentives.¹

1. The NTIA Letter Includes Several Meritorious Recommendations.

To its credit, the NTIA Letter acknowledges the need to let ILECs compete and rejects calls by AT&T and others to regulate ILECs and their affiliates out of the marketplace. In this regard, the Letter includes several constructive proposals. For example:

Affiliate resale. NTIA urges the Commission not to "prevent the affiliate from reselling the ILEC's services or from acquiring unbundled network elements from the ILEC." (NTIA Letter at 6.) As GTE explained in its comments, affiliates that share a corporate parent with an ILEC must have the ability to offer packages of services, including advanced services, basic local services, and interexchange services, in order to compete against similar offerings from AT&T/TCG/TCI and MCI WorldCom. That is, as NTIA puts it, "[t]he affiliate should ... have the same flexibility as competitors have to provide 'one-stop shopping' to its customers." *Id.* The Commission should adopt NTIA's proposal and, to effectuate it, should preempt any state decisions denying in-franchise area certification to an affiliate that shares a corporate parent with an ILEC. Further, State Commissions should not enact or continue more onerous rules, nor should they attempt to restrict an advanced services affiliate's ability to provide any service within its affiliate ILEC territory, a violation of Section 253(a).

LEC performance of installation and maintenance. NTIA proposes a series of separation requirements that, in its view, would justify non-dominant status for the affiliate. *Id.* at 2-3. In general, GTE supports these requirements, which largely track the commitments GTE is willing to make as part of its National Advanced Services Plan. Notably, NTIA – unlike the NPRM – does not propose to ban an ILEC's performing installation and maintenance functions for the advanced services affiliate. As GTE explained in its comments, this proposed ban is the most intrusive aspect of the Commission's proposed separation rule and would place companies with ILEC affiliates at a profound competitive disadvantage compared to the likes of AT&T and MCI WorldCom, which have no restriction on such cross-affiliate activities. The Commission should permit ILECs to perform installation and maintenance functions for advanced

¹ The NASP is modeled on Section 64.1903 of the Commission's Rules, which governs the provision of interexchange services by independent ILECs. However, the requirements of that rule are enhanced in numerous respects in order to afford CLECs more efficient collocation choices and greater access to xDSL-capable loops. This approach fully addresses all reasonable competitive concerns while directly advancing the important goals of Section 706.

services affiliates on a nondiscriminatory basis, pursuant to interconnection agreements or tariffs.

Transfers to the affiliate. NTIA urges the Commission to allow ILECs to transfer DSLAMs and customer premises DSL modems to advanced services affiliates, noting that "[s]uch devices are readily obtainable in the marketplace and do not appear to be characterized by such economies of scale as to prevent competitors from deploying such equipment, even over a limited customer base." *Id.* at 5. The ability to transfer such equipment is essential if the separation option is to be viable. As NTIA explains, "ILECs may not find separation attractive ... if they cannot transfer their existing advanced services operations to their newly-created affiliates." *Id.* In addition, given the ready availability of DSLAMs and the lack of significant economies of scale, the Commission should hold that ILECs need not provide unbundled access to DSLAMs under Section 251(d)(2).

Spectrum sharing. NTIA properly recognizes (*id.* at note 101) that spectrum sharing – that is, carrying more than one carrier's service on the same loop – should be explored through voluntary arrangements rather than mandated by the Commission. The record in this proceeding clearly establishes that spectrum sharing raises profound operational and technical issues that are not susceptible to resolution by agency fiat.

Spectrum management. Similarly, NTIA recommends that the Commission leave it to national standards bodies to develop guidelines for proper spectrum management. *Id.* at 11-12. Plainly, technical issues regarding interference between existing and new services are best resolved by expert forums with full industry representation rather than government dictate.

Sunset. Finally, GTE supports NTIA's recommendation that the separation requirements sunset, although it disagrees that sunset should not occur for four years, as suggested by NTIA. *Id.* at 7. Under section 11 of the Act, the Commission is compelled to reexamine its rules on a biennial basis, and those rules must be eliminated if no longer necessary. In addition, the parent company of an ILEC should be able to file a petition at any time demonstrating that local competition has developed sufficiently that the separate affiliate requirement should be removed. The four year sunset therefore should be an outer limit on the rule's applicability, which does not foreclose earlier relief on either a company-specific or industry-wide basis.

2. In Significant Respects, NTIA's Proposals Are Needlessly Regulatory.

Notwithstanding the positive points noted above, there are several areas where NTIA proposes requirements that are unnecessary to assure fair competition, would unduly hamstring ILECs, and are inconsistent with Section 706. In particular:

Separate Affiliate Issues

General. NTIA endorses the proposal to permit a separate affiliate owned by the corporate parent of an ILEC to provide advanced services on a non-ILEC, non-dominant basis. At the same time, though, it recommends that the Commission forbear from applying the 251(c) obligations to the affiliate "if ILECs give other carriers timely and nondiscriminatory access to all of the network elements that they need to deploy competitive services." In NTIA's view, this requirement will enable the Commission to determine that 251(c) has been "fully implemented" with respect to enhanced services, and the separate affiliate requirement will allow the Commission to conclude that forbearance will be in the public interest. NTIA Letter at 3.

While NTIA is correct that the Commission can forbear from Section 251(c) on a service-by-service basis, its broader legal analysis suffers from the same fatal flaw as the NPRM. Specifically, it fails to recognize that an affiliate owned by the corporate parent of an ILEC is not an ILEC itself, unless it can be considered a successor or assign of the ILEC. Neither NTIA nor the NPRM discusses this fundamental legal requirement or explains why rigid separation requirements are needed to avoid successor or assign status. Rather, as GTE demonstrated at length in its comments, few if any of the proposed separation requirements bear even remotely on whether the affiliate is a successor or assign, and therefore is itself an ILEC.

Similarly, NTIA (like the NPRM) utterly fails to explain why lesser separation requirements, such as those adopted less than three years ago to govern independent ILEC provision of interexchange services, do not assure that the affiliate has no market power and is therefore non-dominant. In reality, GTE has been providing interexchange services, advanced services, and resold local services through its GTE Communications Corporation subsidiary in compliance with the less restrictive Docket 96-149 and 96-150 rules without any evidence of preferential treatment by the GTE telephone operating companies or undue competitive advantage. Imposing onerous new separation requirements would force GTE to discontinue offering advanced services through GTE Communications Corporation, causing significant disruption to customers. The Commission should not use this ostensibly deregulatory docket to impose even stricter requirements than exist today.

Finally, the forbearance approach advocated by NTIA is simply not needed to guard against degradation of an ILEC's facilities, as NTIA asserts. ILEC service quality is closely regulated by state commissions and, with burgeoning competition, ILECs have every incentive to continue providing excellent service.

Pre-certification. NTIA proposes that each ILEC should receive Commission certification prior to commencing advanced services operations through a separate

affiliate.² *Id.* at 4. GTE opposes a pre-certification requirement. ILECs will be required to treat their affiliate no differently than any third-party advanced service provider. NTIA's reason for pre-certification – determining that competitors have nondiscriminatory access to UNEs needed to deploy advanced services – is therefore superfluous. If an ILEC does not comply with the rules, it can be dealt with through the complaint process. A pre-certification requirement, in contrast, inevitably would turn into the equivalent of a 271 review proceeding, with competitors dredging up every real or imagined misdeed and parties filing thousands of pages of affidavits. The Commission should avoid creating such an opportunity for delay and regulatory gamesmanship and should deploy its limited resources more effectively by focusing on enforcement.³

Independent officers and directors, public ownership. Contrary to NTIA's recommendation (*id.* at 4), common non-operating officers and directors should not be prohibited. Areas such as human resources and treasury do not involve a sharing of competitive information, and prohibiting common officers and directors between an ILEC and an affiliate in these areas therefore imposes unnecessary burdens. In addition, GTE strongly objects to any mandate to permit "separate, non-majority, public ownership" in an advanced services affiliate. Such a requirement is wholly unnecessary to assure that the affiliate is not a successor or assign and that it lacks market power. Such highly intrusive government intervention would cause significant expense (as the parent company would have to recapitalize its affiliates) and would accomplish nothing. Furthermore, a third-party ownership requirement would be a forced expropriation for which the Commission lacks any statutory authority.

Sharing of customer information. GTE agrees with NTIA that the LECs should not transfer customer information to advanced services affiliates where doing so would violate Section 222. *Id.* at 6 and note 46. NTIA goes well beyond the statute, however, in proposing that any information an ILEC makes available to its affiliate should be provided to competitors on the same terms and conditions unless the customer specifically directs otherwise. Any such requirement would trample on customer privacy; the decision to release information to one company (whether or not an affiliate of an existing service provider) cannot automatically be held to authorize disclosure to dozens of other competitors. Even aside from the privacy issue, such a rule would put

² NTIA's phrasing here is imprecise; it is not the ILEC that is commencing such operations, but rather the corporate parent that will establish, fund, and manage the separate affiliate.

³ Moreover, the Commission could well be flooded with certification requests from hundreds of ILECs (or, more accurately, their corporate parents). Such a prospect would overwhelm the agency and bring processing of requests to a screeching halt.

a burden on the ILEC to decide which companies should receive disclosure of which information – and might well deluge competitors with information for which they have no use.

Sharing of corporate logos or brand names. GTE concurs with NTIA that the advanced services affiliate should be allowed to market using the same brand name and logo as the ILEC. *Id.* By way of clarification, however, GTE reiterates that the GTE brand and logo are assets of the corporate parent, not the ILEC as implied by NTIA. Therefore, there is no need for the affiliate to compensate the ILEC for use of a common brand name or logo. *See id.* at n.48.

Regulation of the affiliate's services. NTIA proposes that the separate affiliate (alone among nondominant access providers) be required to tariff its advanced services, so that the Commission can assure that the ILEC does not extend preferential treatment to the affiliate and that the affiliate does not impose unreasonable or discriminatory resale or use restrictions. *Id.* Such a requirement is anticompetitive and unnecessary. First, imposing a unique tariffing requirement on the affiliate would place it at a profound competitive disadvantage; all of its competitors would know its rates but it would have no access to similar information. Relatedly, as the Commission has found, tariffing can actually diminish competition by making it easier for competitors simply to match prices. Second, tariffing is not necessary to police compliance with the nondiscrimination requirement and resale rules. Compliance should be presumed, and allegations of improper conduct can be dealt with through the complaint process. Finally, any rules regarding interactions between the nondominant advanced services affiliate and affiliated ISPs must be the same for all advanced service providers. An advanced services affiliate has no greater ability or incentive to favor particular ISPs than does any other provider of advanced services. If anything, the Commission should focus its attention on assuring nondiscriminatory treatment of ISPs by cable companies offering broadband Internet access – where the market leaders have defiantly refused to permit the kind of nondiscriminatory access that is standard operating procedure in the telecommunications industry.⁴

Collocation Rules

GTE's NASP includes several measures designed to make collocation more affordable and convenient. For example, GTE proposed to offer cage sizes in increments of 25 rather than 100 square feet, to permit collocating carriers to share common collocation space on either a caged or a cageless basis, and to support third-

⁴ GTE also notes that NTIA is wrong in stating that an affiliate's tariff "would need ... minimal cost support." *Id.* at 7. The Commission's Rules do not require nondominant carriers to file any cost support.

party verification of space exhaust, subject to state commission review. GTE believes that these measures, along with the other collocation-related aspects of its NASP, fully meet the needs of prospective collocating parties without raising undue risks to network security.

NTIA, in contrast, proposes onerous requirements that ILECs develop new databases containing collocation-related information (*id.* at 8), permit collocation of switching equipment (*id.* at 9), and give collocating parties the option of "cageless" collocation, where a CLEC's equipment would be placed on the same racks as ILEC equipment and CLECs would be given access to the racks in order to install and maintain equipment (*id.* at 10). None of these proposals should be adopted.

First, developing a database containing the kinds of information sought by NTIA would be highly resource-intensive. Data such as the exact amount of collocation space available in each central office, number of collocators, amount of space for pending orders, and space that could be created by eliminating "retired-in-place" equipment are ever-changing. Collecting and updating such data for every central office would be a hugely burdensome task, for which the ILEC undoubtedly would not be fully compensated. The Act requires that ILECs treat their collocated affiliates and third party collocators in a nondiscriminatory manner. GTE complies with this mandate and publishes in its tariffs a list of central offices where collocation has been requested and the availability of space. It should not be required to spend large sums of money to create vast new databases of limited utility.

Second, as fully explained in GTE's comments, the Commission lacks the statutory authority to require collocation of switching equipment. Notwithstanding NTIA's efforts to parse the statute, the simple fact is that switching equipment is not "necessary for interconnection or access to unbundled network elements," as required by Section 251(c)(6) and as properly determined by the Commission in the *Local Competition Order*.

Third, cageless collocation raises grave security risks that cannot be satisfactorily mitigated through use of cameras, badges, or other means. GTE's NASP offers CLECs a variety of options that accomplish the goals of cageless collocation without placing the network at risk.

Loop Availability Requirements

In the NASP, GTE agreed to offer conditioned loops upon request even where it does not provide such loops to an affiliate.⁵ GTE therefore will not respond herein to

⁵ GTE also committed to provide physical sub-loop unbundling upon request where technically feasible.

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NTIA's analysis of the *Iowa Utilities Board* decision (except to state its disagreement with NTIA's legal theory).

GTE is compelled, however, to address certain other points raised by NTIA. First, for the reasons discussed above regarding a collocation database, the Commission should not mandate development of a loop information database containing "descriptions of loop length, condition, location, gauge of wire involved, and the presence of all equipment that will either hinder or facilitate the provision of DSL services." *Id.* at n.62. GTE's advanced services affiliate and unaffiliated providers will perform pre-ordering and ordering functions on loops in the same manner, satisfying the Act's nondiscrimination requirement. Second, GTE disagrees that CLECs should be able to request any technically feasible method of obtaining DSL-compatible loops. As long as the ILEC offers such methods to affiliated and unaffiliated providers on a nondiscriminatory basis, the Act's requirements are met.

Conclusion

For the foregoing reasons, and those expressed in GTE's comments and reply comments, the Commission should adopt GTE's NASP and the NTIA proposals discussed in section 1 hereof.

Respectfully submitted,



W. Scott Randolph
Director – Regulatory Matters

cc: Commissioner Susan Ness
Commissioner Harold Furchtgott-Roth
Commissioner Michael Powell
Commissioner Gloria Tristani
Lawrence Strickling, Chief, Common Carrier Bureau